IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5371 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

D P VEKARIYA

Versus

SURAT URBAN DEVELOP AUTHORITY

Appearance:

MR KG SUKHWANI for Petitioner

MR MD PANDYA for Respondent No. 1

MR JAYANT PATEL for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/10/2000

C.A.V.JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner- a building contractor has challenged the decision of respondent No.1-Surat Urban

Development Authority (hereinafter referred to as the "SUDA") accepting the tender of the respondent No.2-Shreeji Krupa Buildcon Ltd for tender work for construction of 1032 dwelling units for economically weaker sections of the society at village Bhastan in Surat urban area.

2. By tender notice (at annexure "A" to the petition) tenders were invited by the SUDA for construction of 1032 dwelling units for the economically weaker section of the society at village Bhastan in Surat urban area. The estimated cost of the construction work was Rs.5 crore and odd. Several conditions were stipulated for eligibility. One of such conditions was that the bidder must produce certificates showing completion of three or more works of similar nature and of the value of 40% of the tender amount. The last date for submitting the tender form was 7.4.2000 and the tenders were opened on 10.4.2000. Four parties submitted their tenders and offered to carry out the tender work for the following amounts:

L & T Ltd Rs.7.00 Crores

M/s Shreejikrupa Rs.5.24 crores
Buildcon ltd alternate
(Respondent No.2) Rs.5.04 Crores

M/s A.K.Patel Rs.4.92 Crores

M/s D.P.Vekariya Rs.4.58 Crores
(petitioner)

The SUDA awarded the contract work to the respondent No.2-Shreejikrupa Buildcon Ltd. for an amount of Rs.5.24 crores. The petitioner was excluded from consideration on the ground that he has not carried out three works of similar nature for the requisite value i.e. 40% of the tender amount offered by him. According to the petitioner, the petitioner had addressed letters on 14.4.2000 and on 2.6.2000 requesting the SUDA not to consider the offer of parties who had not complied with the tender conditions. The petitioner has challenged the decision of the SUDA accepting the offer of respondent No.2 and awarding the contract to respondent No.2 at the aforesaid rate on the ground that the petitioner was eligible and its tender was required to be accepted as the petitioner had quoted the lowest rate.

3. In response to the notice, affidavits-in-reply

have been filed by V.S.Sheth, Deputy Executive Engineer, SUDA and also by Vijaybhai Zinabhai Patolia, Senior Executive of respondent No.2. The petitioner has also filed affidavit-in-rejoinder to both the affidavits-in-reply. Learned counsel for the parties were heard at length and this petition is being finally disposed by this judgment.

4. Mr.Y.N.Oza with Mr.K.G.Sukhwani, learned counsel for the petitioner raised the following contentions:

4.1 Respondent No.2 was not eligible as it had not carried out requisite works as per condition No.5 of the tender notice requiring completion of three or more similar nature of works of value of 40% of the tender amount.

4.2 Respondent No.2 had submitted conditional tender or tender containing two alternative prices. Therefore, the respondent No.2 ought to have been held to be ineligible.

4.3 The petitioner is an "AA" class contractor who has carried out works of value of Rs.5 crores and more and once the State Government has recognised the petitioner as an "AA" class contractor, the SUDA can not be permitted to doubt the competence of the petitioner, much less, the petitioner's eligibility. The petitioner had submitted all the necessary certificates to show its eligibility and the SUDA has erred in not awarding the contract to the petitioner.

4.4 Awarding the contract to the petitioner would have resulted into a saving of Rs. 66 lacs and still the SUDA has acted arbitrarily in taking the impugned decision.

5. On the other hand, Mr.M.D.Pandya for SUDA and Mr.Jayant Patel for respondent No.2 have opposed the petition and have made the following submissions:

5.1 The SUDA had accepted the tender of respondent No.2 on 28.4.2000 and an agreement was entered into between the SUDA and respondent No.2 on 5.5.2000. Respondent No.2 had accordingly entered into agreements for contract labour. The present petition has thereafter been filed on 7.6.2000 and by the time the petition came up for hearing substantial work has been carried out. Hence, the petition deserves to be dismissed on the ground of delay, laches and acquiescence.

5.2 Respondent No.2 fulfilled all the eligibility criteria including the criterion of producing certificates for completion of three works of similar nature for value of 40% of the tender amount. Respondent No.2 had not submitted any conditional tender.

5.3 The petitioner was not eligible as he had not produced the requisite certificates for completion of three works of similar nature of value of 40% of the amount.

DISCUSSION:

CONTENTION NOs. 1 and 2:

6. As far as the first contention about the eligibility of respondent No.2 is concerned, the main attack is on the ground that respondent No.2 had not completed three works of similar nature for value of Rs.2 crores and more. The gravamen of the challenge is that one of the works for which respondent No.2 had produced a certificate was for construction of 483 units. Thereafter the contract road works and gutter works was also awarded to the respondent No.2, but for these two different works the SUDA issued a common certificate for a value of Rs.2.25 crores. The estimated cost of work of construction of 480 dwelling units was Rs.182.52 lacs. If the amount for two works, i.e. building of dwelling units and road and gutter works are separated, respondent No.2 had not carried out the work of value of Rs.2 crores.

7. As against the above contention, the submission made on behalf of the respondents is that the total sum of Rs.225 lacs for which the certificate was issued by the SUDA comprised of the following amounts:

Rs.219.41 lacs Actual cost of building works for 483 tenements

Rs.5.59 lacs for internal roads

It was part of the work covered under the above contract.

Rs.10 lacs for extra item facilities of drainage

It was also part of the same work

Rs.290 lacs Total

Even if one takes the value of contract for only building work, even then it was worth Rs.2.19 crores. It was more than 40% of the offer of respondent No.2 for the present tender works at Rs.5.24 crores. Hence, there was no question of considering respondent No.2 as ineligible on the basis of the aforesaid objection.

It is further submitted that the respondent No.2 did not submit any unconditional tender nor did it quote two prices so as to disqualify respondent No.2. As per the special conditions of tender clause No.9 all the tenderers were requested to give offer based on their own design and plan. This was to enable the authority to consider whether it was worth inviting fresh tenders for such alternate tender based on different design and plan and not as per the plan and design of the authority as per tender invited. Respondent No.2 as an alternate suggestion submitted in a sealed cover. However, the SUDA had not found alternate design and plan appropriate and there did not arise any question of inviting fresh tenders as per the plan and design submitted by respondent No.2. The SUDA has considered only the tenders as invited as per the plan and design as given by the authority with tender.

8. In view of the above explanation offered by the respondents, it can not be said that respondent No.2 incurred any disqualification by quoting price for alternate design for which SUDA itself had invited as per clause 9. of special conditions of the tender nor can it be said that respondent No.2 was ineligible or disqualified on any ground so as to keep him out of consideration.

CONTENTION NO.3:

9. As far as the controversy about the eligibility of the petitioner is concerned, it is pointed out in the affidavit-in-reply filed on behalf of SUDA that the petitioner had produced certificate of experience for construction of value of Rs.2,90,82,615/- but the said certificate was a combined certificate for two separate works.

10. In affidavit-in-rejoinder it is submitted on behalf of the petitioner that 112 MIG tenements at Vapi, 192 LIG tenements at Pandesara and 80 MIG tenements at Vapi were constructed by the petitioner as per the contract awarded by the GHB and all these works were

executed during the same period and therefore combined certificate issued by the GHB for the above contracts can not be said to be inadmissible for the purpose of satisfying the eligibility criterion No.5.

11. It appears to the Court that the purpose of stipulating condition No.5 in the tender notice was to make sure that the tenderer must be having not only the experience of building works but such experience must be on such a large scale that the work for constructing 1043 tenements could be entrusted to such party. Considering the experience of construction of 112 MIG tenements at Vapi, 192 LIG tenements at Pandesara and 80 MIG tenements at Vapi for the GHB could have been considered sufficient experience if all the works were executed around the same time. However, there is not enough material on record to show the exact period during which the above works were carried out. The view taken by the SUDA was not the only possible or plausible view and another view was possible but in the absence of adequate details about the aforesaid separate contracts of GHB and in view of passage of time during which period respondent No.2 has proceeded to put up substantial construction as reflected in the affidavit in reply dated 28.8.2000 this Court is not inclined to interfere with the impugned decision of SUDA at this stage, but the Court can not help observing that even if there was any doubt about the eligibility of the petitioner, looking to the fact that the petitioner was otherwise experienced "AA" class building contractor and the rates offered by the petitioner were substantially lower by Rs.66 lacs the SUDA as a prudent businessman ought not to have excluded the petitioner from consideration right at the outset and could have invited respondent No.2 and the petitioner and other parties for negotiations with a caveat that calling the parties for negotiations did not amount to acknowledging that the parties called for negotiations were eligible as per the technical requirements. Such a course of action could have kept the competition alive and enabled the SUDA to obtain more competitive rates and ultimately after finding that both respondent No.2 and the petitioner and others had offered competitive rates thereafter the SUDA could have taken the final decision regarding eligibility as well as rates and then awarded the contract. In such a situation the authority is not bound to accept the lowest offer when the tender work pertains to construction of a large number of dwelling units. Even when there are a number of eligible parties, the past experience, quality of construction made in the recent past, time limit within which the work would be completed, financial capacity etc would be relevant

considerations.

12. The Court is therefore not inclined to interfere with the decision of the SUDA under Article 226 of the Constitution only in view of the fact that there are no sufficient details on record of the petition to hold that the view taken by the SUDA about the eligibility of the petitioner was perverse and also in view of the fact that the SUDA had accepted the tender of respondent No.2 on 28.4.2000 and awarded the contract to respondent No.2 as far back as on 5.5.2000 pursuant to which respondent No.2 proceeded with the construction and substantial construction has been put up. But dismissal of the petition may not be treated as expression of opinion that the SUDA had acted in a prudent manner or in the best possible public interest.

13. Subject to the aforesaid observations the petition is dismissed. Rule is discharged. There shall be no order as to costs.

6.10.2000 (M.S.SHAH,J)